

Application Number 10/731,868  
Amendment dated May 24, 2006  
Responsive to Office Action mailed February 24, 2006

### **REMARKS**

This amendment is responsive to the Final Office Action dated February 24, 2006. Applicant has amended claim 1 and added claims 22 and 23. Claims 1-23 are pending. Of these, claims 13, 14 and 18-21 are withdrawn.

### **Claim Rejection Under 35 U.S.C. § 102**

In the Final Office Action, the Examiner rejected claims 1, 5-10, 12, 15 and 16 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,427,086 to Fischell et al. (hereinafter "Fischell"). The Examiner also rejected claims 1-3, 5-7, 9, 10, 12 and 15-17 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,648,914 to Berrang et al. (hereinafter "Berrang"). The Examiner also rejected claims 1-4, 7 and 15 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pub. No. 2003/0109903 Berrang et al. (hereinafter "Berrang Application").

Applicant respectfully traverses the rejections to the extent such rejections may be considered applicable to the amended claims. The applied references fail to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(e), and provide no teaching that would have suggested the desirability of modification to include such features.

In the Final Office Action dated February 24, 2006, the Examiner apparently interpreted the term pocket to include any body cavity holding an implant. However, such an interpretation is inconsistent with the Applicant's claims as amended. For example, as amended, independent claim 1 recites making an incision in a scalp of a head of a patient to create a scalp flap, after separating the scalp flap from the skull, separating a portion of the remainder of the scalp adjacent to the fold from the skull to create a pocket adjacent to the fold and between the scalp and the skull, and placing at least a portion of a low-profile implantable medical device in the pocket adjacent to the fold and underneath the scalp. Support for the amendment to claim 1 can be found at least from FIGS. 2-5 and the accompanying text.

None of the applied references discloses or suggests these limitations of amended claim 1. For example, none of the applied references discloses or suggests separating a portion of the remainder of the scalp adjacent to the fold from the skull after separating the scalp flap from the skull to create a pocket adjacent to the fold and between the scalp and skull, as required by amended claim 1. Nor to any of the applied references disclose or suggest placing at least a

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portion of a low-profile implantable medical device in such a pocket, as required by amended claim 1.

Fischell, Berrang, and Berrang Application individually and collectively fail to disclose each and every limitation set forth in independent claim 1. For at least this reason, the Examiner has failed to establish a prima facie case for anticipation of Applicant's claims 1-12 and 15-17 under 35 U.S.C. § 102(e). Withdrawal of this rejection is requested.

#### **Claim Rejection Under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Fischell, Berrang or Berrang Application. Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

As discussed previously in this Amendment, Fischell, Berrang and Berrang Application individually and collectively fail to disclose or suggest every element of independent claim 1. The rejection of claim 11 fails to overcome the deficiencies of Fischell, Berrang and Berrang Application with respect to the elements of claim 1. For example, it would not have been obvious to one of ordinary skill in the art from the disclosures of Fischell, Berrang and Berrang Application to separate a portion of the remainder of the scalp adjacent to the fold from the skull after separating the scalp flap from the skull to create a pocket adjacent to the fold and between the scalp and skull, and place at least a portion of a low-profile implantable medical device in such a pocket, as recited by independent claim 1. Because claim 11 is dependent on claim 1, the subject matter of claim 11 would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claim 11 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

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### New Claims

Applicant has added claims 22 and 23 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions. For example, the references fail to disclose or suggest placing a majority or substantially all of a low-profile implantable medical device in a pocket as defined by independent claim 1, as required by claims 22 and 23, respectively. No new matter has been added by the new claims. Support for claims 22 and 23 can be found at least in FIGS. 2-5 and the accompanying text.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Applicant does not acquiesce with any of the Examiner's current rejections or characterizations of the prior art, and reserve the right to further address such rejections and/or characterizations.

Please charge Deposit Account 50-1778 the amount of \$890.00: \$790.00 for the filing fee of the Request for Continued Examination (RCE) and \$100.00 to cover the cost of two additional claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778.

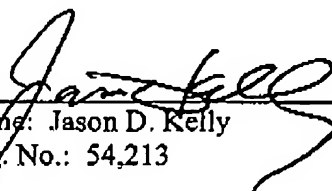
The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

5/24/06

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